

### **III. REMARKS/ARGUMENTS**

#### **A. Status of the Application**

Claims 1-15 are pending. Claims 8, 9, 12, and 15 are amended. Reconsideration of this application in light of the following remarks is respectfully requested.

#### **B. Rejections of Claims 1 – 15 under 35 U.S.C. §103(a)**

Claims 1-15 stand rejected under 35 U.S.C. §103(a) over U.S. Patent Publication No. US 2003/0125013 to Mizell et al. (“Mizell ‘013”). Applicant traverses this rejection on the grounds that the applied reference is defective in establishing a prima facie case of obviousness with respect to claims 1-15.

Submitted herewith is a declaration under 37 C.F.R. § 1.131 by Bernard Tiegerman (the “Tiegerman Declaration”) that shows a date of invention of the claimed subject matter that is prior to the date of publication of Mizell ‘013. In view of the Tiegerman Declaration, it is respectfully submitted that Mizell ‘013 is not available as a reference under 35 U.S.C. §102(a) for the purpose of determining the patentability of the claims of this application.

Also submitted herewith is a Statement Concerning Common Ownership signed by Andrew S. Ehmke, the attorney of record, (the “Statement Concerning Common Ownership”), which states that Mizell ‘013 and the claimed subject matter were, at the time the claimed subject matter was made, owned by the same person or subject to an obligation of assignment to the same person, namely, to Nortel Networks Limited. As is known, 35 U.S.C. § 103(c)(1) states that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In view of the Statement Concerning Common Ownership, and because Mizell ‘013 qualifies as prior art only under 35 U.S.C. § 102(e), it therefore satisfies the criteria under 35 U.S.C. §

103(c)(1). Consequently, Mizell '013 is disqualified as prior art under 35 U.S.C. §102(e) and cannot preclude patentability under 35 U.S.C. § 103(a) of the subject matter of claims 1-15.

Since Mizell '013 is not available as a reference against the claims of the subject application, Applicant submits that a prima facie case of obviousness over Mizell '013 has not and cannot be established with respect to claims 1-15.

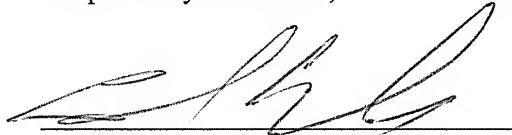
For these reasons, it is respectfully requested that the rejection of claims 1-15 under 35 U.S.C. § 103(a) over Mizell '013 be withdrawn.

**C. Conclusion**

Claims 1-15 are now pending in the present application. In view of the foregoing remarks, allowance of claims 1-15 is respectfully requested. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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